

Parties

THIS CONTRACT is made on the **15th** day of **December**, in the year **2009**.

BETWEEN

The NSW Department of Industry and Investment ('the Department');

AND

the Regional Development Australia - Central Coast NSW, ABN 49731314890 trading as Regional Development Australia - Central Coast NSW an association incorporated in the State of New South Wales under the Associations Incorporation Act 1984 and having its registered address at Northloop Road, Central Coast Campus, Ourimbah NSW 2258 ('the RDA').

Recitals

WHEREAS:

- A. Regional Development Australia committees are not-for-profit organisations comprised of business and community representatives, strategically positioned to advise on the infrastructure needs of the regional community and improving the engagement of regional communities, regional development organisations and local governments.
- B. Regional Development Australia committees support, promote and disseminate information on the Department's policy initiatives for the benefit of their communities. Regional Development Australia committees also provide feedback to enable effective review and informed refinement of policies and programs. RDA committees are jointly funded by the Commonwealth and the State of New South Wales.
- C. The Department wishes to provide Funding to the RDA for the purposes, and subject to the terms and conditions, set out in this Contract.
- D. The Department is required, in the interests of good governance and by operation of law, to ensure the accountability of funding provided and accordingly, the RDA is required to be accountable for all Funding it receives under this Contract.

Operative Clauses

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. Interpretation

1.1. In this Contract, unless the contrary intention appears:

ABN has the same meaning as it has in the *A New Tax System (Australian Business Number) Act 1999* (Cth);

Annexure refers to an annexure to this Contract;

Asset means personal, real or incorporeal property of the RDA brought into existence either wholly or partly with the use of Funding but does not include Intellectual Property;

Business Day means any day that is not a Saturday or Sunday or a national public holiday;

Code means Code of Conduct and Ethics for RDA Members as outlined in the Procedures Manual for Regional Development Australia NSW committees;

Completion Date means, unless a date is specified in the Schedule, the day after the RDA has completed all that the RDA is required to do under this Contract to the satisfaction of the Department;

Confidential Information means information that:

- (a) is by its nature confidential;
 - (b) is designated by the Department as confidential; or
 - (c) the RDA knows or ought to know is confidential;
- but does not include information which:
- (d) is or becomes public knowledge other than by breach of this Contract;
 - (e) is in the possession of the RDA without restriction in relation to disclosure before the date of receipt from the Department; or
 - (f) has been independently developed or acquired by the RDA;
- where the burden of establishing any of the exceptions referred to in paragraphs (d), (e) and (f) must be on the RDA;

Conflict means any matter, circumstance, interest or activity affecting the RDA which may or may appear to impair the ability of the RDA to carry out the work under this contract diligently and independently;

Contract means this document and includes any Schedules and Annexures;

Date of this Contract means the date written on the execution page of this Contract, and if no date or more than one date is written there, then the date on which this Contract is signed by the last Party to do so;

Department means the Department of Industry and Investment;

Electronic Communication has the same meaning as in the *Electronic Transactions Act 1999* (Cth);

Financial Institution means a recognised financial institution such as a bank, building society or credit union operating in Australia;

Funding means the amount or amounts payable under this Contract as specified in Item B of the Schedule, including interest earned on that amount;

Funding Period means the period from 1 July 2009 to 30 June 2012;

GST has the same meaning as in the GST Act;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Intellectual Property includes all copyright and neighbouring rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, Confidential Information (including trade secrets and know how) and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

Key Performance Indicators means the Key Performance Indicators as described in the RDA Business Plan;

Liaison Officer means any person for the time being holding, occupying or performing the duties of the office of the Department specified in the Schedule or any other person notified to the RDA;

Other Funding means financial or in-kind resources (with in-kind resources valued at market rates) other than Funding;

Party means a party to this Contract;

Personal Information means information or an opinion (including information or an opinion forming part of a data base), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Procedures Manual means the Department Procedures Manual for Regional Development Australia NSW committees;

RDA shall, where the context so admits, include the RDA Chair, RDA Members, RDA Personnel and the RDA's successors and assigns;

RDA Activities means the priorities and activities as stipulated in A.1 of the Schedule and the RDA Business Plan;

RDA Budget means the budget for expenditure of Funding for the purposes of conducting RDA Activities or performing obligations under this Contract;

RDA Business Plan means the business plan as submitted to the Department;

RDA Chair means a person appointed to this position by the Commonwealth and New South Wales Governments;

RDA Committee means the governing body of the RDA as established under the RDA's Rules of Incorporation;

RDA Logo means the branded logo for Regional Development Australia as amended from time to time;

RDA Member means a person appointed to this position by the Commonwealth and NSW Governments;

RDA Personnel means the employees, agents and subcontractors of the RDA engaged to undertake RDA Activities or any part thereof;

Records include documents, information and data stored by any means and all copies and extracts of the same;

Report means material that is provided to the Department for reporting purposes on matters including the use of Funding, outcomes and evaluation of RDA activities or obligations of this Contract, as stipulated in the Schedule;

Rules of Incorporation means the Rules of Incorporation, regulations and by-laws, if any, of the RDA;

Schedule refers to the schedule to this Contract;

Taxable Supply has the same meaning as it has in the GST Act;

Term of Contract means the term of this Contract as set out in Clause 3.1.

1.2. In this Contract, unless the contrary intention appears:

- (a) words in the singular number include the plural and words in the plural number include the singular; and
- (b) words importing a gender include any other gender; and
- (c) words importing persons include a partnership and a body whether corporate or otherwise; and
- (d) clause headings, words capitalised or in bold format and notes in square brackets (“[]”) are inserted for convenience only, and have no effect in limiting or extending the language of provisions, except for the purpose of rectifying any erroneous cross-reference; and
- (e) all references to clauses or subclauses are to clauses or subclauses in this Contract; and
- (f) all references to dollars are to Australian dollars and this Contract uses Australian currency; and
- (g) reference to any statute or other legislation (whether primary or subordinate) is to a statute or other legislation of the Department and, if it has been or is amended, is a reference to that statute or other legislation as amended; and
- (h) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- (i) the word “including” means “including, but not limited to”.

1.3. The Schedule, Annexures and documents incorporated by reference, if any, form part of this Contract. In the event of any conflict or inconsistency between any part of:

- (a) the terms and conditions contained in the clauses of this Contract;
- (b) the Schedule;
- (c) the Annexures;
- (d) documents incorporated by reference, if any;

then the material mentioned in any one of paragraph (a) to (d) of this subclause 1.3 has precedence over material mentioned in a subsequent paragraph, to the extent of any conflict or inconsistency.

2. RDA to carry out RDA Activities

2.1. The RDA must carry out RDA Activities within the Funding Period and in accordance with this Contract diligently, effectively and to a high professional standard.

3. Term of the Contract

3.1. The Term of the Contract commences on the Date of this Contract and, unless terminated earlier, it expires on the Completion Date.

4. Payment

- 4.1. Subject to this clause 4, parliamentary appropriation, and compliance by the RDA with this Contract (including the invoicing requirements, if any, specified in the Schedule), the Department shall pay the Funding to the RDA at the times and in the manner specified in the Schedule.
- 4.2. The Department must make all payments under this Contract to the RDA by way of electronic funds transfer into an account in the name of the RDA, and which is solely controlled by the RDA, with an authorised deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia ('the Nominated Account').
- 4.3. The Department is not liable to provide any Funding to the RDA under this Contract until after the RDA has provided the following details of the Nominated Account in writing to the Department:
- (a) the Name and Branch of the Financial Institution;
 - (b) the BSB number of the Financial Institution;
 - (c) the account number; and
 - (d) the account title.
- 4.4. The RDA must immediately advise the Department in writing if any of the details of the Nominated Account change.

5. Taxes, Duties and Government Charges

- 5.1. Subject to this clause, all taxes, duties and government charges imposed or levied in Australia or overseas in connection with this Contract must be borne by the RDA.
- 5.2. The provisions of this Clause in respect of GST apply if the RDA is registered or is required to be registered for GST.
- 5.3. The Department is registered in accordance with the GST Act and will notify the RDA of any change in the Department's GST registration status.
- 5.4. Funding paid by the Department under this Contract excludes GST for any Taxable Supply made by the RDA under this Contract.
- 5.5. The RDA must issue the Department a tax invoice in accordance with the GST Act in relation to any Taxable Supply by the RDA to the Department in connection with this Contract prior to payment of Funding by the Department.
- 5.6. If an activity undertaken by the RDA under this Contract is deemed by the GST Act to be a Taxable Supply, the Department may, by notice in writing to the RDA, require the RDA to pay the Department, within thirty (30) Business Days of receiving such notice, an amount equal to the amount of GST which is notionally payable by the Department on the value of that Taxable Supply.
- 5.7. Funding payable by the Department to the RDA under this Contract must not include any amount which represents GST paid by the RDA on the RDA's own inputs and for which an input tax credit is available to the RDA.

6. Conditions of Funding

- 6.1. The Funding must be expended by the RDA only for RDA Activities and in accordance with the RDA Budget and RDA Business Plan towards the achievement of Key Performance Indicators, and in accordance with this Contract.
- 6.2. The RDA must manage and monitor expenditure of the Funding in accordance with this Agreement and in accordance with sound financial practices that comply with the provisions of the Public Finance and Audit Act 1983, specific directions issued by Department and the requirements of the Associations Incorporation Act 1984.
- 6.3. The RDA must comply and continue to comply with the provisions of this Contract.
- 6.4. The RDA must do all things necessary to ensure that all payments out of its monies are correctly made and properly authorised and adequate control is maintained over the incurring of liabilities.
- 6.5. Except with the Department's prior written approval, the RDA must not use any of the following as any form of security for the purpose of obtaining or complying with any form of loan, credit, payment or other interest:
 - (a) Funding;
 - (b) this Contract or any of the Department's obligations under this Contract; or
 - (c) any Assets or Intellectual Property Rights in Contract material.
- 6.6. Any interest earned on the Funding from a Financial Institution by the RDA must be used and dealt with by the RDA as if the interest earned were part of Funding.
- 6.7. Any income earned from the use of the Funding, must be used and dealt with by the RDA as if it were part of the Funding.
- 6.8. The Department is not responsible for the provision of additional money to meet any expenditure in excess of Funding.
- 6.9. The operation of this clause survives the expiration or earlier termination of the Contract.

7 Records

- 7.1 The RDA must keep full and accurate records of the conduct of RDA Activities including, without limitation, progress against the RDA Business Plan and RDA Budget, the receipt and use of Funding and Other Funding (if any), the acquisition of Assets and the creation of Intellectual Property rights.
- 7.2 The RDA must implement a Records management system that:
 - (a) maintains accurate, up-to-date files of all operational documents;
 - (b) maintains secure, separate files for RDA Personnel (that contain employment contracts, performance reports and other appropriate material); and
 - (c) appropriately disposes of records when the records have ceased to be of current value.
- 7.3 The RDA must maintain records of vehicle usage consistent with the requirements of the Australian Taxation Office (ATO).
- 7.4 The RDA must ensure all electronic records are secure and appropriate back up and archival processes are established and maintained for such records.
- 7.5 The operation of this clause survives the expiration or earlier termination of this Contract.

8. Reporting

- 8.1 The RDA must provide to the Department, at the times and in the manner stated in item D the Schedule, or as otherwise requested:
- (a) Reports and performance information relating to the RDA's progress in undertaking the RDA Activities and Key Performance Indicators as set out in the RDA Business Plan; and
 - (b) financial information on a quarterly basis and audited annual financial reports.
- 8.2 Six monthly reports provided must be endorsed by the RDA Committee and certified as correct by the RDA Chair.
- 8.3 The operation of this clause survives the expiration or earlier termination of the Term of the Contract.

9. RDA Corporate Governance

- 9.1 The RDA must adopt sound internal procedures and policies to ensure that it consistently meets its obligations under this Contract.
- 9.2 The RDA agrees, acknowledges and undertakes that in performing its obligations under this Contract including the RDA activities it will follow the Procedures Manual and comply with the Code of Conduct and Ethics and any relevant directions given by Department.
- 9.3 The Committee must ensure that the RDA members and personnel adhere to the Code of Conduct.

10 Confidentiality

- 10.1 The Parties agree and acknowledge that:-
- (a) they will not disclose the Confidential Information to any person without the prior written consent of the other Party.
 - (b) they will take reasonable steps to ensure that the Confidential Information in their possession is kept confidential and protected against unauthorised use and access.
- 10.2 The Parties acknowledge and agree that they may make any disclosures in relation to the Confidential Information in the following circumstances:
- (a) in order to comply with any applicable law, audit requirements or requirement of any regulatory body or any organ of parliament; or
 - (b) to any of their employees or agents to whom it is necessary to disclose the terms provided the employee or agent undertakes to keep the terms confidential;
 - (c) to its legal and/or financial advisers to obtain advice on the operation of the Agreement.
- which will not be considered to be a breach of Clause 10.1.
- 10.3 The obligations of confidentiality under this clause do not extend to information that:
- (a) is public knowledge other than as a result of the breach of this clause; or
 - (b) is required to be disclosed by law.

- 10.4 The RDA also agrees to ensure that any information received by it from the Department in accordance with this Agreement or arising from it will be treated as Confidential Information subject always to the requirements of the law and unless the Department indicates in writing otherwise.
- 10.5 Without limiting the generality of Clause 10.1 of this Agreement, the Parties expressly agree that this Agreement, its terms and conditions and the negotiations leading up to it, are confidential and the Parties agree not to make any disclosure thereof without the prior written consent of the other Party.
- 10.6 The Parties agree and acknowledge that Clause 10.5 does not apply to a disclosure by the Department to other RDAs.

11. Protection of Personal Information

- 11.1 The RDA agrees to and must ensure its employees, agents and sub-contractors comply with the Department's privacy policy in respect of any Personal Information disclosed to the RDA by the Department or acquired by the RDA in performing its obligations under this Contract. A copy of the Department's privacy policy can be obtained at www.business.nsw.gov.au.

12. Indemnity

- 12.1 The RDA must indemnify (and keep indemnified) the Department, its officers, employees and agents against any:
- (a) loss or liability incurred by the Department;
 - (b) loss of or damage to Department property; or
 - (c) loss or expense incurred by the Department in dealing with any claim against the Department, including legal costs and expenses on a solicitor/own client basis and a cost of time spent, resources used, or disbursements paid by the Department;
arising from:
 - (d) any act or omission by the RDA, an RDA Member or any RDA Personnel, or any RDA agents, volunteers or subcontractors in connection with this Contract, where there was negligence or unlawful act or omission or wilful misconduct on the part of the person whose conduct gave rise to that liability, loss, damage or expense;
 - (e) any breach by the RDA of its obligations or warranties under this Contract;
 - (f) the use of Assets; or
 - (g) any claim, suit, demand, action or proceeding by any person in respect of any infringement of Intellectual Property rights by the RDA or RDA Personnel in the course of, or incidental to, performing the RDA's Activities or
 - (h) any claims by third parties about the ownership or right to use Intellectual Property Rights in the RDA's reports or other material.
- 12.2 The RDA's liability to indemnify the Department under Clause 12.1 shall be reduced proportionally to the extent that any act or omission on the part of the Department or its employees or agents contributed to the relevant loss, damage, expense or liability.
- 12.3 The Department's right to be indemnified under this Clause is in addition to, and not exclusive of, any other right, power, or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant liability, damage, loss or expense.

12.4 The operation of this clause survives the expiration or earlier termination of this Contract.

13. Insurance

13.1 The Department and the RDA agree that the Commonwealth will maintain insurance for the RDA to cover the following:

- (a) Not for Profit Organisation Liability Insurance, also known as Association Liability, (includes cover for 'wrongful act', 'employment practices' and 'personal injury or publishers liability' to a limit of \$10,000,000 for each claim);
- (b) Personal Accident Insurance (covers RDA Committee members whilst undertaking RDA activities including travel to and from meetings) to a limit of \$100,000 for each claim; and
- (c) General and/or Products Liability Insurance (covers Personal Injury/Property Damage/Advertising Liability Insurance and includes coverage of up to \$20,000,000 for each claim).

13.2 To obtain the benefit of the above insurance cover the RDA must provide the Commonwealth with a record of RDA Members and RDA Personnel, including dates that RDA Members and RDA Personnel join and leave the RDA. The RDA must immediately advise the Commonwealth of any changes to RDA Members and RDA Personnel when they occur.

13.3 The RDA must, for as long as any obligations remain in connection with this Contract, maintain the following insurance:

(a) Workers' Compensation Insurance

The RDA must maintain workers' compensation insurance for an amount required by the relevant State legislation to cover RDA Personnel.

(b) Asset Insurance

The RDA must maintain comprehensive insurance of all Assets and contents insurance for all Assets owned or controlled by the RDA.

(c) Vehicle Insurance

The RDA must maintain comprehensive insurance of all motor vehicles (subject to conditions of leases) controlled by the RDA.

13.4 Wherever requested, the RDA must provide the Department, within ten (10) Business Days, with a copy of any insurance policy affected in accordance with its obligations to insure and a certificate of currency of such insurance.

13.5 The RDA must ensure that subcontractors of the RDA are covered by insurance, either under the RDA's insurance policies or under separate insurance policies.

13.6 The operation of this clause survives the expiration or earlier termination of this Contract.

14. Conflict of Interest

14.1 The RDA represents and warrants that no Conflict exists or is likely to arise in the performance of its obligations under this Contract by itself, the RDA Chair or by any RDA Member or RDA Personnel, at the date of this Contract.

14.2 Without limiting the operation of this clause, the RDA must, during the Term of the Contract, ensure that no Conflict arises through the RDA's involvement with the Department or its programs, if any, specified in the Schedule.

- 14.3 If during the Term of the Contract an actual or perceived Conflict arises, or appears to either of the Parties likely to arise, the RDA must:
- (a) within fourteen (14) days notify the Department in writing and of the steps the RDA proposes to take to resolve or otherwise deal with the Conflict;
 - (b) disclose to the Department all relevant information relating to the Conflict;
 - (c) take such steps as the Department may, if it chooses, reasonably require to resolve or otherwise manage the Conflict; and
 - (d) keep and maintain detailed, readily accessible documentation of the report of the Conflict as well as all action taken to resolve or otherwise manage the Conflict.
- 14.4 If the RDA fails to notify the Department under sub-clause 14.3, or is unable or unwilling to resolve or manage the Conflict as required, the Department may require the removal of RDA Members or Personnel or may terminate the Contract.
- 14.5 The RDA must establish internal procedures to assess and address actual and perceived conflicts of interest.
- 14.6 Conflict of interest must be a standing item for all formal RDA Committee and sub-committee meetings.
- 14.7 The premises and Assets of the RDA must not be used for political purposes or activities. This includes the physical or electronic display of political materials.

15 Access to Premises and Records

- 15.1 Without derogating from any other right under this Contract, the RDA must at all reasonable times give the Department access to premises:
- (a) occupied by the RDA;
 - (b) at which Assets are located;
 - (c) at which accounts, records or documents relating to this Contract are located; or
 - (d) at which work under this Contract is or has been undertaken;
- and must permit the Department to:
- (e) inspect any Department material, RDA material or Asset; and
 - (f) inspect and copy accounts, records or documents, however stored, in the custody or under the control of the RDA which relate to this Contract, whether directly or indirectly.
- 15.2 The rights referred to in Clause 15.1 are subject to the provision of reasonable prior notice by the person seeking to exercise those rights, except where the person reasonably believes that there is an actual or apprehended breach of the law.
- 15.3 In the event that the premises referred to in Clause 15.1 above are not controlled by the RDA, the RDA must, upon receipt of a request for access, take all reasonable steps to:
- (a) arrange for access to those premises to be given to the Department who gave notice under Clause 15.2; or
 - (b) remove the material, Assets, accounts, records or documents from those premises and move them to other premises controlled by the RDA and advise the Department who gave notice under Clause 15.2 accordingly and who must be entitled to exercise the rights set out in Clause 15.1 without the giving of any further notice to the RDA.

- 15.4 The requirement for access as specified in Clause 15.1 does not reduce the RDA's responsibility to perform its obligations in accordance with this Contract.
- 15.5 In any subcontract entered into for the purposes of this Contract the RDA must ensure that the Department is given the same rights in respect of the subcontract as are given by the RDA to the Department under this clause and, if necessary, must enforce those rights as contained in the subcontract against the subcontractor for the benefit of the Department.
- 15.6 This clause applies for the duration of the Funding Period and for a period of seven (7) years from the date of expiration or earlier termination of the Funding Period.

16 Repayment of Funding and Termination

Repayment

- 16.1 If the Department, acting reasonably, considers that the RDA has failed to meet its obligations and/or conditions under this Contract in whole or in part, the Department may demand by notice in writing served upon the RDA repayment in whole or in part of the unexpended balance of the Funding within 30 days of service of such notice.

Termination

- 16.2 Either party may terminate this Contract by giving 3 months prior written notice to the other party.
- 16.3 Without limiting the generality of Clause 16.2 of this Contract, the Department may terminate this Contract, by giving one month's notice to the RDA if the RDA:
- (a) breaches any material obligation under this Contract and fails to correct or remedy such breach within 30 days of a notice being served by the Department requesting that the breach be rectified.
 - (b) fails, in the reasonable opinion of the Department, to satisfy any or all of the obligations and/or conditions diligently and competently under the Contract and does not improve the quality of such performance within 90 days of written notice.
 - (c) uses the Funding or part of the Funding for purposes other than as set out in this Contract without the prior written consent of Department.
 - (d) breaches Clauses 14 (Conflict of Interest) and/or 25 (No assignment) of this Contract, or any provision of the Code of Conduct and Ethics.
 - (e) resolves to go into liquidation or has a summons for its winding up presented to the Court or enters into a scheme or arrangement with its creditors under the Corporations Law, the Act or any other applicable insolvency Law or a liquidator, receiver or receiver/manager is appointed under the Corporations Law, the Act or any other applicable insolvency Law.

- 16.4 Upon termination of this Contract, the RDA must:
- (a) prepare and deliver to the Department a statement of expenditure incurred by the RDA for the RDA Activities in accordance with the RDA Budget and RDA Business Plan.
 - (b) prepare and deliver to the Department a report in respect of the RDA Activities, RDA Budget, RDA Business Plan and Key Performance Indicators in a form reasonably acceptable to the Department.
 - (c) return any unexpended amount of the Funding to Department.
 - (d) return any and all assets purchased by the RDA with the Funding, or provided as assistance in kind by the Department, without limitation including computers hardware and software, mobile telephones.
- 16.5 Notwithstanding any other provision of this Contract, if in the Department's reasonable opinion the RDA has acted negligently and/or without good faith and/or not in accordance with the terms of this Contract in respect of the use of the Funding, the Department may, in the notice of termination, require the RDA to repay the Funding or such part of the Funding as is stated in the notice of termination within the time specified in the notice of termination.
- 16.6 The RDA agrees and acknowledges that all sums requested to be repaid to the Department shall be debts due and recoverable by Department.

17. *Acknowledgment and Publicity*

- 17.1 The RDA agrees that the RDA's letterhead, stationery (excluding business cards) and newsletter, as well as any publications arising from this Agreement or any publicity marketing and promotion about the matters relating to this Agreement or developed as a result of RDA activities will acknowledge the financial and other support of the Department and will clearly include the Department logo as per guidelines issued by the Department's Communications unit.
- 17.2 The RDA agrees to effectively promote the Region and such promotion shall acknowledge the support of the Department.
- 17.3 The RDA agrees, warrants and undertakes not to make any public statements or give undertakings which would commit the Department, the Minister or the Government of New South Wales to a particular action or expenditure, without the prior written approval of the Department and/or the Minister. This position should be made clear in any negotiations which the RDA, its Members, employees or agents may undertake with any company, firm or other body, or a member of the public.
- 17.4 The RDA must update, from time to time, and maintain a public web site for the RDA which includes:
- (a) information about the role and activities of the RDA;
 - (b) a list of RDA Members and contact details for the RDA;
 - (c) a link to the Department's website.

- 17.5 The Department reserves the right to publicise and report on the awarding of Funding to the RDA.
- 17.6 The operation of this clause survives the expiration or earlier termination of this Contract.

18 RDA Personnel

- 18.1 The RDA must employ an Executive Officer (the RDA Executive Officer) or equivalent position to manage the day-to-day administration of the RDA.
- (a) The engagement of the RDA Executive Officer must be:
- through an open and public recruitment process; and
 - based on principles of merit and equal opportunity and undertaken in a fair and transparent process.
- (b) The RDA Executive Officer must take direction from and be directly responsible to the RDA Chair.
- 18.2 The RDA may employ additional staff as required to support the RDA Executive Officer in the administration of the RDA. The RDA must use the same recruitment process as for sub-clause 18.1(a) in engaging such staff.
- 18.3 The RDA must engage RDA Personnel under a formal employment contract which has been developed independently of the RDA employee and endorsed by the RDA Chair and Committee. The employment contract must:
- (a) include a clear job description and comprehensive statement of duties;
- (b) clearly specify the conditions of employment;
- (c) clearly identify the lines of reporting to the RDA Committee (through the RDA Chair as the employer);
- (d) include regular performance assessments (at least every six months) that outline the details of the performance measures to be assessed;
- (e) include a termination provision;
- (f) be endorsed by the RDA Committee; and
- (g) be signed by the RDA Chair and the employee.
- 18.4 The maximum contract period for employment of all RDA Personnel must remain consistent with the Completion date.
- 18.5 The RDA must ensure that increases in remuneration for RDA Personnel must be clearly linked to performance assessments.
- 18.6 The RDA must undertake regular performance assessments of all RDA Personnel (at least on a six monthly basis).
- 18.7 The RDA must ensure that RDA Personnel undertake their duties in accordance with the terms of this Contract. An induction kit, which includes a copy of the employment contract and Code of Conduct and Ethics, must be provided to all RDA Personnel upon commencement of employment with the RDA.
- 18.8 The RDA must maintain and apply sound grievance procedures which are open and accessible to all RDA Personnel.
- 18.9 The RDA must meet its legal obligations as an employer.

19 Subcontracting

- 19.1 The RDA must engage a subcontractor under a formal contract. The contract must:
- (a) include a clear statement of services to be performed;
 - (b) clearly specify the deliverables and obligations of the subcontractor;
 - (c) outline the supervision and reporting arrangements for the subcontractor;
 - (d) be endorsed by the RDA Chair and RDA Committee.
- 19.2 The RDA is fully responsible for the performance of its obligations under this Contract, even though the RDA may have subcontracted any part of them.
- 19.3 The RDA is responsible for ensuring the suitability of a subcontractor for the work proposed to be carried out and for ensuring that such work meets the requirements of this Contract.
- 19.4 The RDA remains liable under this Contract for the acts or omissions of the RDA's subcontractors as if they were current subcontractors.
- 19.5 The RDA must, in any subcontract entered into with a subcontractor for the purposes of carrying out the RDA Activities, reserve a right of termination to take account of the Department's right of termination under clause 16 and the RDA must, where appropriate, make use of those rights in the event of a termination by the Department.

20 Copyright and Intellectual Property Rights

- 20.1 The RDA agrees and acknowledges that the Intellectual Property Rights in the software and other materials designed and issued by Department provided to the RDA by the Department from time to time for the conduct of the RDA activities, are owned solely by the Department for and on behalf of the Crown.
- 20.2 The RDA agrees, when using the software and other materials designed and issued by the Department, to acknowledge the Department's ownership of, or any licences for the use of, the Intellectual Property Rights in the software and other materials of the Department.
- 20.3 The RDA agrees and acknowledges that it must return all copies of the software and other materials designed and issued by the Department and provided by Department to the RDA from time to time:
- (a) at any time on demand from the Department; and/or;
 - (b) upon termination of this Contract if requested to do so by Department, and/or;
 - (c) upon the RDA otherwise ceasing to carry out the RDA activities and/or RDA Business Plan, if requested to do so by the Department.
- 20.4 The RDA agrees warrants and undertakes that it will not infringe or breach or permit or suffer to be infringed or breached any Intellectual Property Rights of the Department or any third party.
- 20.5 The RDA agrees warrants and undertakes that it will obtain all necessary and appropriate licences for the use of any third party Intellectual Property Rights.

- 20.6 The RDA agrees to search all appropriate trademarks, if applicable, and any names or designs used or to be used by it in connection with this Contract and will seek legal opinion, if necessary, that use of the trademark, design or name will not contravene any legal requirement.

21 *Compliance with Laws and Department Policies*

- 21.1 The RDA must, in carrying out the obligations under this Contract, comply with the provisions of all relevant statutes, regulations, by-laws and requirements of any Commonwealth, State, Territory or Local Authority.
- 21.2 The RDA must, in carrying out the obligations under this Contract, comply with all relevant Department policies.

22 *Negation of Relationship of employment, partnership and agency*

- 22.1 The RDA must not represent itself as being the employee, partner or agent of the Department and must ensure that any partners and agents of the RDA do not represent themselves as being employees, partners or agents of the Department.

23 *Entire Agreement, Variation and Severance*

- 23.1 This Contract records the entire agreement between the RDA and the Department in relation to its subject matter.
- 23.2 Except for action the Department is expressly authorised to take elsewhere in this Contract, no variation of this Contract is binding unless it is agreed in writing and signed by both the RDA and the Department.
- 23.3 Any reading down or severance of a particular provision does not affect the other provisions of this Contract.

24 *Waiver*

- 24.1 If either the RDA or the Department do not exercise (or delay in exercising) any of their respective rights, that failure or delay does not operate as a waiver of those rights.
- 24.2 A single or partial exercise by the RDA or the Department of any of their respective rights does not prevent the further exercise of any right.
- 24.3 Waiver of any provision of, or right under, this Contract:
- (a) must be in writing signed by the Party entitled to the benefit of that provision or right;
 - and
 - (b) is effective only to the extent set out in the written waiver.
- 24.4 In this Clause 'rights' means rights or remedies provided by this Contract or at law.

25 *Assignment and Novation*

- 25.1 The RDA must not assign its rights under this Contract without prior written approval from the Department.
- 25.2 The RDA agrees not to enter into negotiations with any other person for the purposes of entering into an arrangement that shall require novation of this Contract without first consulting the Department.

26 Incorporation

- 26.1 The RDA warrants that it is, and will remain, incorporated under the relevant legislation of New South Wales and that its Rules of Incorporation are not, and must not become, inconsistent with this Contract.
- 26.2 The RDA must obtain the Department's written approval to any amendments to its Rules of Incorporation or Constitution, or to any change to its name, or to utilise any trading name. If the RDA is in breach of this clause, the Department may terminate this agreement under subclause 16.3 (a) [Termination].
- 26.3 The RDA must obtain the Department's written approval to any amendments to its Rules of Incorporation or Constitution, which may directly or indirectly affect its eligibility for Funding or its capacity to comply with this Contract. If the RDA alters its Rules of Incorporation in breach of this Clause the Department may terminate this Contract.
- 26.4 The RDA must provide copies of the original Rules of Incorporation and any subsequent amendments to the Department within 30 days of any such amendment.
- 26.5 The RDA must, if requested in writing by the Department, take immediate action to change its name to a name approved by the Department.

27 Funding Precondition

- 27.1 The RDA agrees that it is a precondition of entitlement to Funding that the RDA must:
- (a) have an Australian Business Number (ABN);
 - (b) within fourteen (14) days notify the Department if it ceases to be registered with an ABN;
 - (c) correctly quote its ABN on all documentation to the Department;
 - (d) supply proof of GST status, if requested by the Department; and
 - (e) immediately notify the Department of changes to its GST status.

28 Dispute Resolution

- 28.1 Both Parties must not commence any legal proceedings in respect of any dispute arising under this Contract, which cannot be resolved by discussion, until the procedure provided by this clause has been utilised, with the exception of urgent interlocutory relief.
- 28.2 Any dispute arising during the course of this Contract must be dealt with as follows:
- (a) the Party claiming that there is a dispute must send the other a written notice setting out the nature of the dispute;
 - (b) the Parties must try to resolve the dispute through direct negotiation by persons who they have given authority to resolve the dispute;
 - (c) the Parties have ten (10) Business Days from the sending of the notice to reach a resolution or to agree that the dispute is to be submitted to mediation or some alternative dispute resolution procedure; and
 - (d) if:
 - (i) there is no resolution of the dispute;
 - (ii) there is no agreement on submission of the dispute to mediation or some alternative dispute resolution procedure; or

- (iii) there is a submission to mediation or some other form of alternative dispute resolution procedure, but there is no resolution within twenty eight (28) Business Days of the submission, or such extended time as the Parties may agree in writing before the expiration of twenty eight (28) Business Days,

then either Party may commence legal proceedings.

- 28.3 Despite the existence of a dispute, both Parties must (unless requested in writing by the other Party not to do so) continue to perform obligations under this Contract.
- 28.4 The operation of this clause survives the expiration or earlier termination of this Contract.

29 Applicable Law and Jurisdiction

- 29.1 The laws of New South Wales apply to this Contract.
- 29.2 Both Parties must submit to the non-exclusive jurisdiction of the courts of New South Wales in respect to any dispute under this Contract.

30 Liaison

- 30.1 The RDA must:
 - (a) provide information to the Department as reasonably required by the Department during the period of this Contract;
 - (b) comply with all of the Department's reasonable requests, directions and monitoring requirements.
- 30.2 The RDA must liaise with and report to the Department as reasonably required by the Department during the period of this Contract through the Liaison Officer nominated in the Schedule. In the absence of the Liaison Officer, the RDA must direct all communications with the Department to the Department delegate, unless otherwise directed by the Department. For the purposes of this subclause "communications" includes all reports or requests required or contemplated by this Contract.
- 30.3 The RDA must provide the Department with a written copy of all notices of meetings, agendas, minutes of RDA meetings (including Reports and Financial Statements). The financial report for RDA meetings is to include year-to-date expenditure against the RDA Budget. The RDA must allow the Department to attend RDA meetings as an observer.
- 30.4 The RDA may nominate, from time to time, a person who has authority to receive and sign notices and written communications for the RDA under this Contract and accept any request or direction in relation to RDA Activities.
- 30.5 The RDA must maintain an email address for Electronic Communication with the Department.

31 Notices

- 31.1 A Party giving notice or notifying under this Contract must do so in writing or by Electronic Communication:
 - (a) directed to the recipient's address, as varied by any notice; and
 - (b) hand delivered or sent by pre-paid post or Electronic Communication to that address.

The address details of both Parties are specified in item E of the Schedule. A notice given in accordance with the preceding subclause is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by pre-paid post, five (5) Business Days after the date of posting unless it has been received earlier;
- (c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth).

THE SCHEDULE

A. RDA Activities

A.1. Roles and Responsibilities

A.1.1 The roles and responsibilities of an RDA include:

Consultation and Engagement with the Community

- Consulting with regional stakeholders on needs and priorities;
- Acting as a two-way conduit for information and advice between regional communities and government agencies; and
- Acting as a solution broker by engaging with all levels of government, regional stakeholders and communities in developing solutions to regional needs and priorities, including initiatives to increase employment opportunities in regions.

Regional planning

- Working with the Department to implement the Regional Business Growth Plan and other strategic priorities identified in the State Plan;
- Supporting strategic regional planning including regional business growth priorities in collaboration with Australian, state, territory and local governments;
- Undertaking annual reporting against milestones/performance indicators
- Providing objective data and information which provides a socio-economic snapshot of the region to all levels of government;
- Galvanising support for agreed regional priorities.

Whole of government activities

- Acting as a first point of contact for Commonwealth agencies wanting to consult in a region;
- Providing a point of consistent advice to government on regional and community priorities;
- Contributing a regional perspective to other national agendas (for example, the social inclusion agenda, and sustainability, drought and climate change); and
- Administering third party contracts on behalf of government agencies that do not have a regional presence.

Promotion of Government programs

- Referring regional stakeholders to relevant agencies delivering government programs and services;
- Identifying and assisting local organisations to develop regional projects;
- Providing advice and assistance to leverage funding for regional projects; and
- Providing advice on the background of grant applicants as requested by government agencies

Community and economic development

- Identifying the community and economic needs of the region and advocating priorities to government and other key stakeholders;
- Facilitating training for community organisations and businesses to identify opportunities for funding or development, such as forums about the types of funding available and guidance on how to develop project proposals and funding applications ;

- Building networks of businesses, community groups or individuals with common interests and coordinating leadership efforts in the region;
- Acting as a solution broker by facilitating coordination and cooperation between organisations to leverage improved outcomes from government programs and local initiatives; and
- Acting as a partnership broker by identifying and building partnerships between community organisations to support jointly developed and funded projects.

Other Activities requested by Government

These additional activities may include promoting new initiatives, undertaking consultations, and developing or contributing to reports on particular issues

A.2. Annual Business Plan

- A.2.1 The RDA must develop an annual business plan. The RDA must consider in preparation of its annual business plan the undertaking of RDA activities during the period of this Contract.
- A.2.2 The RDA must submit a copy of its annual business plan to the Department by 31 December for the 2009 - 2010 financial year, and otherwise by 31 July for the following financial year.
- A.2.3 The RDA must ensure that each annual business plan addresses the key RDA activity area and sets appropriate Key Performance Indicators (KPIs) and the expected level of performance against the KPIs.
- A.2.4 KPIs should be aligned with the KPIs indicated in the Department's Strategic Plan, with a high priority given to the attraction of new employment and new investment.

B. Funding Payment Procedures

B.1 Funding is as follows:

Financial Year	Amount (GST exclusive)
2009-10	\$140,000 plus \$10,000 remote meeting allowance where applicable.
2010-11	\$140,000 plus \$10,000 remote meeting allowance where applicable.
2011-12	\$140,000 plus \$10,000 remote meeting allowance where applicable.

B.2 The Department will make payment of the Funding to the RDA in six monthly instalments during the term of the agreement. Claims should be submitted by RDAs in January and June.

B.3 Payments are subject to all reports due to that date, having been submitted and found acceptable by the Department.

C. Other Funding

- C.1 The RDA must disclose details of Other Funding, in the format specified in item C.2:
- (a) Prior to entering into this contract;
 - (b) any time an RDA enters into another funding contract;

- (c) by 30 September 2010 for the status of the RDA as at 30 June 2010;
- (d) by 30 September 2011 for the status of the RDA as at 30 June 2011; and
- (e) by 30 September 2012 for the status of the RDA as at 30 June 2012.

C.2 The RDA's disclosure of details of Other Funding must be in the following format:

Name of Organisation	Name of Project/Program	Funding Period		Other Funding to RDA
		From	To	\$ (GST Excl)
Total				

D. Reports

D.1 Outcomes Report

D.1.1 The RDA must provide to the Department six monthly outcomes reports detailing the RDA's performance against the relevant RDA Activities, Business Plan and Key Performance Indicators.

D.2 Budget Report

D.2.1 The Acquittal of Budgets Report must set out the amount of funding received from each funding source (ie Commonwealth, State/Territory Government, and all other sources) and the expenses incurred by the RDA over the six month period.

D.3 Audited Annual Financial Reports

D.3.1 The RDA must provide to the Department an audited annual financial report, in accordance with the following table:

Period of the report	Date due to the Department
For the 12 months ending 30 June 2010	31 October 2010
For the 12 months ending 30 June 2011	30 October 2011
For the 12 months ending 30 June 2012	30 October 2012

D.3.2 Each audited annual financial report must include:

- (a) an audited statement of receipts and expenditure in respect of the Funding and Other Funding (if any) for the previous financial year which must include a definitive statement made by an Approved Auditor as to whether:

- i. the statements of receipts and expenditure are fair and true; and

ii. Funding and Other Funding (if any) were held and expended in accordance with this Contract; and

(b) a certificate that all Funding and Other Funding (excluding in-kind) received for the previous financial year was expended for the purpose of the RDA Activities and expended and held in a manner in accordance with this Agreement; and

(c) a statement of the balance of the Nominated Account, and

(d) a copy of the Asset Register.

D.3.3 Each audited annual financial report must be certified by the chair of the RDA Committee. The audited statement referred to in item D.3.2(a) must be carried out by an Approved Auditor and must comply with the Australian Auditing Standards.

E. Contact Details

RDA

The contact details of the RDA are as follows:

RDA Name: Regional Development Australia – Central Coast NSW

Physical Address: Northloop Road Central Coast Campus Ourimbah NSW 2258

Postal Address: PO Box 240 Ourimbah NSW 2258

Telephone: 02 4349 4949

Facsimile: 02 4349 4956

Liaison Officer:

Shane Alexander

Manager, Operations and Administration

Industry and Investment NSW

PO Box 5477

Sydney 2001

Tel: 02 9338 6711

Fax: 02 9338 6726

shane.alexander@business.nsw.gov.au

Signature Blocks

IN WITNESS WHEREOF the Parties have executed this Contract on the date first above written.

SIGNED for and on behalf of The
Department of Industry and
Investment

Print name of Department signatory above

The Deputy-Director

General
print office held by Department signatory
above



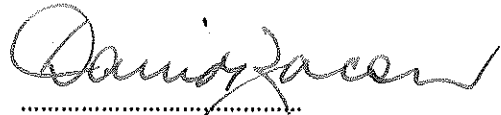
Department signatory signs above

15/12/09
[Insert date]

In the Presence of:

DAVID JOHN BACON

print name of witness above



witness signs above

The Common Seal of Regional Development
Australia - Central Coast NSW
was duly affixed in execution of this agreement in
the presence of the undermentioned officer(s) of
the body who has(have) appended their
signature(s)



.....affix seal
above

JOHN DAWSON

Print name of officer above



RDA officer signs above

CHAIRPERSON
Print position in RDA held above

if a second officer of the RDA is required to sign in
accordance with the Rules of Incorporation of the
RDA:

26/11/2009
[Insert date]

MAREE ROBERTS
Print name of officer above



Second RDA officer signs above if
required

DEPUTY CHAIR
Print position in RDA held above

26/11/2009
[Insert date]